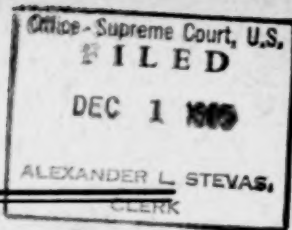


No. 83-542



In the Supreme Court of the United States

OCTOBER TERM, 1983

P.P. LANGFORD, ET AL., PETITIONERS

v.

DAVID L. JAMES, ET AL.

**ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE TENTH CIRCUIT**

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

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Petitioners claim that the court of appeals erroneously applied the decision of this Court in *Oklahoma v. Texas*, 260 U.S. 606 (1923), and the subsequent boundary decrees (261 U.S. 340 (1923), and 261 U.S. 345 (1923)), in rejecting their claim of title to certain land in Texas located along the Red River.

1. Respondents David L. and Ollen James are owners of land in Oklahoma along the Red River (Pet. App. A14-A15). Immediately across the Red River in Texas is land owned by petitioners, the Langfords (*id.* at A16). The boundary between Oklahoma and Texas is the south bank of the Red River. See *Oklahoma v. Texas*, 256 U.S. 70 (1921).

In 1975, the Jameses filed a complaint for declaratory relief, contending that there was a dispute between the two sets of landowners as to the boundary between their lands

and asking the court to determine the exact location of the south bank of the Red River (Pet. App. A17). The United States was named as a party to the suit because of its ownership of certain of the land as trustee for several Indian tribes (*id.* at A16). In its answer, the United States claimed ownership of that portion of the land in dispute located between the medial line of the Red River and the south bank of that river (*ibid.*). Other parties intervened in the suit, claiming ownership of the minerals underlying part of the lands (*id.* at A15).

Following a lengthy bench trial, the district court concluded that (1) the south bank of the Red River was "a well-defined embankment immediately to the east of the presently cultivated lands of Defendants Langford on the Texas side of the river" (Pet. App. A17-A18), which bank is designated as the "wheat field bank" (*id.* at A29); (2) a 1908 change in the course of the river that moved the channel eastward approximately one-half mile was avulsive and therefore effected no change in the boundary between Texas and Oklahoma, which remained along the wheat field bank (*id.* at A30-A31); (3) the Langfords had not, by adverse possession, acquired title to the disputed lands or to the underlying minerals (*id.* at A35-A36); (4) the State of Oklahoma, and thus the Jameses as successors in interest, owned the adjacent bed of the Red River only as far south as its medial line (*id.* at A39); and (5) the United States, by virtue of the decrees in *Oklahoma v. Texas*, 258 U.S. 574 (1922), and 261 U.S. 345 (1923), owns the bed of the Red River from the medial line to the Texas bank opposite the lands of the Jameses in Oklahoma (Pet. App. A39).

The Langfords appealed on the grounds that the district court erred in determining the wheat field bank to be the boundary of their lands and, alternatively, that the court had erroneously denied their claim to ownership by adverse possession. The Jameses and the owners of the underlying

mineral interests cross-appealed from the determination that the United States is the owner of the bed of the Red River opposite a portion of the James's land and south of the medial line of the river.

The court of appeals affirmed the decision of the district court regarding the location of the south bank of the Red River and determined that the district court had properly resolved all the disputed ownership issues (Pet. App. A11). The court of appeals specifically noted that the findings of the district court were supported by the record (*id.* at A10) and in accord with this Court's decision in *Oklahoma v. Texas*, *supra*.

2. Petitioners' claim in this Court (Pet. 14) appears to be that the court of appeals incorrectly affirmed a finding of fact by the district court — the location of the wheat field bank that forms the boundary of their land.¹ However, this Court has repeatedly held that it " 'cannot undertake to review concurrent findings of fact by two courts below in the absence of a very obvious and exceptional showing of error.' " *Berenyi v. District Director*, 385 U.S. 630, 635 (1967) (quoting *Graver Tank & Mfg. Co. v. Linde Air Products Co.*, 336 U.S. 271, 275 (1949)). Moreover, the findings of the district court, as affirmed by the court of appeals, are in full accord with this Court's pronouncements in the *Oklahoma v. Texas* litigation.

3. Petitioners also claim (Pet. 4) that the court of appeals erred in determining that changes in the bed of the Red River were avulsive and therefore that no land was added to their property through the process of accretion. See *Oklahoma v. Texas*, 261 U.S. at 341; *Texas v. Oklahoma*, 457

¹The location of the Texas bank of the Red River dictates the location of the medial line of the river, which, in turn, affects the boundaries of the land in dispute. The land in dispute involves approximately 900 acres (Pet. App. A18).

U.S. 173 (1982). Once again, petitioners are simply challenging a factual finding by the district court, upheld by the court of appeals, that such changes occurred through avulsion during several large floods since 1923 (Pet. App. A10, A30).

To be sure, since an interstate boundary is involved, federal law controls. But the citation of Oklahoma cases by the district court hardly demonstrates that the federal rule of avulsion was not applied. At all events, it seems clear that the facts found show an avulsive change as a matter of federal law.² The district court found that the stream had in fact moved away from the south boundary or wheat field bank by creating a new active channel more than 40 years ago (Pet. App. A29). On this basis, the courts below were fully justified in concluding that an avulsion had occurred and that the boundary was unaffected.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

DECEMBER 1983

²As the Jameses point out (Br. in Opp. 17-18), Oklahoma and federal law on avulsion are similar, if not the same, and would lead to no different outcome in this case.